ORIGINAL

RECEIVED

SEP 12 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses	))))	GN Docket No. 96-113

DOCKET FILE COPY ORIGINAL

TO: The Commission

REPLY COMMENTS OF PRESS BROADCASTING COMPANY, INC.

1. Press Broadcasting Company, Inc. ("Press"), licensee of Station WKCF(TV), Clermont, Florida, hereby submits its Reply Comments in the above-captioned proceeding. These Reply Comments are directed in particular to the Comments submitted herein by the Cable Telecommunications Association ("CTA") and Southwest Missouri Cable TV, Inc. ("SMCT").

2. Both CTA and SMCT express serious and valid concerns about the ability of small businesses to compete in a telecommunications marketplace dominated by large vertically- and/or horizontally-integrated entities. Press specifically supports these expressions of concern. As an independent broadcaster with only one television station (and several radio stations), Press knows first-hand the difficulties of entering a marketplace in which well-established stations owned by large group owners enjoy substantial advantages over the "little guy". Indeed, the overwhelming consolidation of broadcast ownership in the wake of the Telecommunications Act of 1996 has made it virtually impossible for any "little guy" to secure a broadcast

No. of Copies rec'd 0+9
List ABCDE

authorization in virtually any major market in the country.

3. There is one relevant point which Press believes CTA and SMCT have missed, however -- probably because CTA and SMCT, as representatives of the cable industry, are likely to be less aware of the particular problem. That problem is the effect on the cost of programming of certain contractual provisions which tend to favor the cable industry over the broadcast industry. In particular, it is Press' understanding that the residuals rate included in the cost charged to cable operators and cable networks (and, possibly, other non-broadcast video providers) for certain programming is only a fraction (possibly as much as 1/10th) the residuals rate included in the cost of the same programming when sold to broadcasters.

4. Press understands that the practice of computing residuals rates differently for cable and for broadcast arose long ago, when the cable industry was in its infancy and when some preferential treatment was appropriate to encourage the growth of that industry. But now the cable industry (including both cable operators and the industry which supplies programming to those operators) is fully mature and, indeed, in important respects may be more economically sound than broadcasting. [1/]

[1/] For example, it is well-established that cable operators, as multi-channel video providers, enjoy dual revenue streams which enable them to compete against local broadcasters for local advertising revenues while simultaneously deriving substantial income from subscribers and other sources. The same is true for cable networks, which obtain and distribute packaged programming for cable transmission and which are also able to sell advertising on their services and receive additional payments

(continued...)

As a result, it no longer makes any sense at all to provide to the cable industry any preferential treatment in the cost of programming which is available to both the cable and broadcast industries. [2/]

5. This is especially so in view of the fact that many multi-system cable operators are commonly-owned or affiliated with program suppliers, program producers, and cable networks. The result is that the entire cycle of program production, distribution, packaging and transmission can easily become controlled by one (or a very small number) of entities, to the substantial competitive disadvantage of any independent entity which does not happen to belong to the family. And under present circumstances, there is limited incentive for anyone within the

---

[1/] (...continued)
from the cable operators. (By way of illustration of their financial health, it has been reported that basic cable programming networks enjoyed a 26% increase over last year in advertising revenues during the first half of 1996. Total advertising revenues for basic cable programming networks could approach $5 billion for the full year, if current trends continue.) Of course, broadcasters, by virtue of the nature of the broadcast service, are presently unable to derive any second or third revenue stream.

[2/] Of course, it is possible that certain inherent differences between the broadcast and cable industries might justify <u>some</u> cost differentials -- for example, no one would argue that it is less expensive to market a program, or program package, to one of only a handful of cable networks, as opposed to marketing the same programming to 1,000 broadcasters in 200 markets across the country. But the residuals question is completely unrelated to such inherent differences and would not justify any cost differential as between the two industries.

industry to alter that comfortable status quo. [3/]

6. SMCT, a cable operator (albeit a small one), complains in its Comments that it "cannot buy [its] programming with any appreciable margin". SMCT Comments at 4. Since residuals charges contribute to the reduction of that margin, it is clear that, to the extent that residuals charges are substantially greater for broadcasters than for cable operators, the burden imposed on broadcasters -- and particularly entry-level, start-up broadcasters -- is commensurately greater.

7. Press suggests that, as part of the Commission's further proceedings in this docket, the Commission should specifically inquiry into the extent to which price differentials may distort the cost of programming. To the extent that such price differentials and resulting distortion are in fact identified, Press suggests that the Commission should take prompt steps to explore mechanisms to restore a "level playing field." Such steps would be directly akin to the Commission's existing regulations governing program exclusivity provisions, which are intended to effectuate a reasonable and prudent balance between, on the one hand, the private contractual rights of private parties, and on the other, the public's interest in assuring the

---

[3/] To some degree, this tendency may diminish somewhat as more commonly-owned or controlled program producers/program distributors/cable operators acquire their own over-the-air broadcast television stations as well. However, there is no guarantee that such abatement will occur in the foreseeable future, if at all.

general availability of programming. [4/]

8. Press encourages the Commission to act to promote the interests of small and independent business entities who are plainly at an increasing disadvantage in this age of consolidating commercial interests. The elimination of discriminatory pricing practices in the video programming marketplace can and should be one goal in this effort.

Respectfully submitted,

/s/ Harry F. Cole
Harry F. Cole

Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036
(202) 833-4190

Counsel for Press Broadcasting Company, Inc.

September 12, 1996

[4/] Press' primary concern is that the existing status quo limits the availability, to the general public, of many programs/movie packages. As outlined above, it is often uneconomical to market certain programming (including movie packages) to broadcast television. This may account for the rapid decline in, for example, the number of movie titles -- old and new -- available to broadcast television, a decline which is occurring at a time when the number of movies produced each year has seen a significant increase. Currently, virtually all "new" movie product now first passes through pay-cable, pay-per-view and home video, then onto a cable network; such product is only occasionally available for broadcast. Press believes that the decrease in available movies is attributable at least in part to the residuals differential discussed above.